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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/456,603	12/08/1999	Robert Walter Dmitroca	10981247-1	6669

22878 7590 02/06/2003

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EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 02/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/456,603

Applicant(s)

DMITROCA, ROBERT WALTER

Examiner

Stephan F Willett

Art Unit

2141

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 1/17/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_


3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
LE HIEN LUU  
PRIMARY EXAMINER

## **DETAILED ACTION**

### **Response to Amendment**

1. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.
2. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments cannot be held as persuasive regarding patentability.
3. Applicant suggests "these are merely statements that the teachings can be used together, and are not motivation for making the combination ", Paper No. 8, Page 6, lines 25-26. However, Baker suggests "methods and systems for producing ... charts and other displays of data which facilitate analysis of large sets of measurement data", col. 1, lines 7-9 as specifically taught in de Vries and Fletcher. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
4. Applicant suggests "this portion of Baker does not discuss the scaling the current range and the sizes of portions", Paper No. 8, Page 7, lines 18-19. The examiner disagrees and asserts the "size of the portions" reads on "unacceptable values" and "scaling the current range" reads on "inner zone". Also, Baker teaches "chart definitions", col. 8, lines 44-48 that read on said values, as does histogram even with its more limited definition as recognized by the applicant. The examiner thanks the applicant for clarifying the rejection with regard to claim 11 which was part of the rejection as asserted. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
5. Applicant suggests "Siu is not relied upon in the Office Action", Paper No. 8, Page 8, lines 26-27. But Paper # 7 stated "Siu specifically teaches 'each bin in the histogram is defined

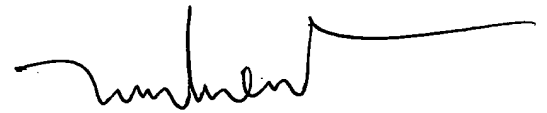
by a range of PCR jitter””. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart, can be reached on (703) 305-4815. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.



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LE HIEN LUU  
PRIMARY EXAMINER